IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3633 of 1999
To
FIRST APPEAL No. 3645 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPL.LAQ OFFICER AND ANOTHER
Versus
RAJNIKANT JIVABHAI PATEL AND OTHERS

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Appearance :
Mr. N.D. Gohil, Asst. GOVERNMENT PLEADER for Appellant(s) : 1 - 2.
MR NILESH A PANDYA for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 17/07/2006

ORAL JUDGMENT

By filing these appeals under section 54 of the Land Acquisition Act, 1894 [hereinafter referred to as the Act], the appellants, Special Land Acquisition Officer, Narmada Project Unit No.5, Vadodara and Executive Engineer, Narmada Project, Baroda Division have challenged the judgment and award dated 10th February 1998 passed by the learned 2nd Extra Assistant Judge, Vadodara in Land Reference Cases No. 47/88 to No. 59/88 whereby the learned Judge has allowed the Reference partly by directing the acquiring body to pay additional amount of compensation at Rs.13,000/- per Hector with interest and solatium.

Before the Reference Court, there were 13 References which were referred to by the Special Land Acquisition Officer for decision of the Reference Court. The lands in question are situated in village Ghayaj. Notification under section 4 of the Act was published on 14.04.83 for the purpose of acquiring the land in question for Jambusar Branch canal of Narmada Project. After considering the objections of the claimants, the Land Acquisition Officer declared an award on 10.09.85 whereby he awarded compensation at Rs.30,000/- per Hector. However, since the owners of the land were not satisfied with the said fixation of market value, at their request, Reference was made for additional compensation. According to the applicants the prevailing market price of the land in question, which were agricultural lands on date of notification was Rs.1,00,000/- per Hector. The learned trial Judge, after considering the documentary as well as oral evidence on record, ultimately, by the impugned order dated 10th February 1998 partly allowed all the References by directing the acquiring body to pay additional amount of

compensation at Rs.13,000/- per Hector with interest and solatium. Being aggrieved by the order passed by the Reference Court, these appeals have been preferred on behalf of the acquiring body.

So far as F.A. No. 3639/99, which arises from Land References Case No. 53/88, is concerned, process issued on respondent No.2, Dahyabhai Bhanabhai Vankar has come back with the endorsement that the same could not be served as he has expired. Learned AGP Mr. Gohil submitted that on inquiry, it is found that the said Dahyabhai has expired about 20 years ago. Mr. Gohil has also relied on the report of the Bailiff in this regard. He further submitted that as per the report of the Talati, the said Dahyabhai has died about 20 years ago. In any case, it seems that the said claimant has died even at the time when the Reference was pending as the Reference Court disposed of the Reference in the year 1998. This First Appeal is filed straightaway against the said deceased who was one of the applicants of Land Reference Case No. 53 of 1988. In any case, this appeal cannot be considered against the said Dahyabhai Bhanabhai Vankar who is respondent No. 2 in F.A. No. 3639/99. Even no application for bringing the heirs is filed. The said appeal cannot be entertained against the deceased Dahyabhai Bhanabhai Vankar as the appeal can be said to have been abated qua him. In any case even filing of the appeal against him is bad as he has died long back at the time when the Reference was made.

So far as F.A. NO. 3644/99 is concerned, the same is filed in Land Reference Case No. 58/88 and learned Assistant Government Pleader states that respondent No.1 therein, viz. Ramanbhai Nagbhai Prajapati has died on 12.1.1988. However, application for bringing his heirs

on record has not been filed so far. Moreover, as per the bailiff report dated 5.1.2000, respondent No.3 Shantibhai Nagjibhai Prajapati has expired on 18.4.1998. In the circumstances, the appeal stands abated insofar as it relates to deceased Ramanbhai Nagbhai Prajapati and Shantibhai Nagjibhai Prajapati are concerned.

Similarly, so far as First Appeal No. 3645/99, which arises from Land References Case No. 59/88 is concerned, learned Assistant Government Pleader states that respondent No.2, Revaben w/o Maganbhai Vaghri could not be served as she has died on 4.1.1988. Still the appeal is filed against her in 1999. The appeal cannot be said to have been validly instituted against the said Revaben. Moreover, as per the bailiff report dated 5.1.2000, respondent No.4 Jamnaben w/o Maganbhai Vaghri has expired somewhere in 1993-94. Hence the appeal insofar as it relates to respondent No. 2 Revaben and Respondent No. 4 Jamnaben stands abated.

So far as First Appeal No. 3637 of 1999 which arises from Land References Case No. 51/88 is concerned, there is only one respondent. As per the report of the Bailiff, the said respondent, Ambalal Shankarbhai Patel, has expired on 28.12.1995. The First Appeal is filed in the year 1999. The appeal, which is filed against a dead person cannot be considered at all. The respondent died when the Reference was pending before the Reference Court and hence the appeal could not have been filed against him. First Appeal No. 3637 of 199, therefore, stands dismissed as abated.

So far as the other appeals are concerned, the same, as stated above, are filed on behalf of the acquiring body challenging award of additional amount of

compensation at Rs.13,000/- per Hector with interest and solatium.

On behalf of the claimants, one Vinubhai Motibhai Patel was examined at Exh.36 before the Reference Court. The said witness has stated that he has purchased agricultural land of block No. 404 of the said village Ghayaj aadmeasuirng 39 Are 42 Gunthas from one Maniben Ranchhodbhai by way of a registered sale deed on 7.5.1979. The sale deed is produced at Exh. 37. The said land was purchased at Rs.46,150/- per Hector . The said transaction had taken place in the year 1979.

Before the Reference Court, on behalf of the State, it was submitted that the Land Acquisition Officer in his award has relied on sale instances at Exh. 48 and Exh. 49 which were of the year 1982. It was therefore submitted that the said two sale instances are nearer to the date of notification u/s 4 of the Act. So far as Exh.48 is concerned, it was submitted that agricultural land bearing block No. 957 admeasuring 47 Are 57 Gunthas was sold for Rs.15,000/- on 21.5.1982 which would come to Rs.31,532/- per Hector. So far as Exh.49 is concerned, it was submitted that agricultural land bearing block No. 1100 admeasuring 51 Area 13 Gunthas was sold for Rs.15,000/- on 27.7.1982 which would come to Rs.29,337/- per Hector. Mr. Gohil submitted that the said sale instances were nearer to the date of notification u/s 4 and therefore reflects the correct price. He therefore submitted that the award of Rs.30,000/- by the Land Acquisition Officer is just and proper.

The learned judge, after considering the evidence on record, came to a conclusion that the claimants are entitled to Rs.43,000/- per Hector and after deducting

Rs.30,000/- awarded by the Land Acquisition Officer, has awarded additional amount of compensation at Rs.13,000/- per Hector with interest and solatium.

So far as the sale deed at Exh.37 is concerned, the same was of the year 1979 and was for a smaller piece of land. The learned Judge therefore deducted 1/3rd for smaller piece of land and applying the principle of increase of 10% ever year from the date of the sale deed to the date of notification, ultimately fixed the value at Rs.43,000/- per Hector, and after deducting Rs.30,000/- already awarded by the Special Land Acquisition Officer, the learned Judge has awarded additional amount of compensation at Rs.13,000/- per Hector with interest and solatium. The same is just and proper, and even on merits the award need not be interfered.

It is required to be noted that by virtue of the said order, the additional amount which is payable to the claimant in none of the case exceeds more than Rs.17,000/-. In fact, in most of the cases, the amount involved is small – in the range between Rs.3000/- to Rs.7000/-. In one case it is even less than Rs.2000/-, and in none of the cases it exceeds Rs.17,000/-.

Learned advocate for the respondent relied on the judgment of the learned Single Judge in F.A. No. 1117 of 2003 [Dy. Collector & LAQ Officer vs. Heirs of deceased Premji Harjibhai Devshi Premjibhai]. In the said judgment, in paragraphs 3 to 5, the learned Single Judge held as under :-

> “3. It may be noted that learned single Judge of this Court as well as a Division Bench of this Court in number of matters have dismissed appeals filed by the

> appellant challenging the awards of the reference courts on the ground of smallness of the amount. The Division Bench of this Court (Coram: M.H. Kadri & C.K. Buch, JJ.) in First Appeal Nos.6765 of 1999 to 6804 of 1999 vide judgment dated 29.3.2000 has considered an amount of RS.25,500/- awarded to the claimant, without considering other statutory benefits, as small amount. In the said judgment it has been observed that it is the consistent practice which is followed by various Division Benches of this Court that wherein claim involved in the Land References cases is less than Rs.35,000/-, appeal should be dismissed on the ground that it involves petty claim.
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> 4. Applying the principles laid down by the Division Bench of this Court in the judgment recorded in First Appeal Nos.6765 of 1999 to 6804 of 1999 to the facts of the present case, in the instant case, the original amount awarded to the respondent is Rs.11,425/- plus statutory benefits, which comes in all to Rs.16,223.50 and, therefore, this amount being a small amount, the appeal deserves to be dismissed on the ground of petty claim.
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> 5. For the foregoing reasons, the appeal fails and is accordingly dismissed with no order as to costs.”

Considering the said judgment, it is not in dispute that the amount involved in all these appeals is small one. The learned trial Judge relied upon Exh. 37 which is a sale instance of 1979. Considering the time gap between the transaction and the notification under section 4 of the Act, the judgment of the Reference Court is in order and no interference is called for more particularly in view of the smallness of the claim.

Considering the aforesaid aspects, all these appeals are dismissed. No order as to costs.

Registry to return the R & P to the Reference Court forthwith.

[P. B. MAJMUDAR, J.]

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